



Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 130405334-3717-02

RIN 0648-BD20

Re-establishing the Sanctuary Nomination Process

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule and call for nominations.

SUMMARY: With this final rule, NOAA re-establishes the process by which communities may submit applications to have NOAA consider nominations of areas of the marine and Great Lakes environments as national marine sanctuaries. Communities, in this context, are defined as a collection of interested individuals or groups (e.g., a friends of group, a chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association). Through this nomination process, NOAA is seeking to give communities an opportunity to identify special marine and Great Lakes areas they believe would benefit from designation as a national marine sanctuary. There is no requirement for who may nominate an area for consideration; however, nominations should demonstrate broad support from a variety of stakeholders and interested parties. This rule contains the criteria and considerations NOAA will use to evaluate national marine sanctuary

nominations, describes the process for submitting national marine sanctuary nominations, and promulgates the regulations necessary to implement this action. If NOAA determines a nomination adequately meets the final criteria and considerations, it may place that nomination into an inventory of areas for the NOAA Administrator, as delegated from the Secretary of Commerce, to consider for designation as a national marine sanctuary. As such, NOAA is not designating any new national marine sanctuaries with this action. In issuing this rule, NOAA replaces the currently inactive Site Evaluation List with a new process for communities and other interested parties to work collaboratively and innovatively in their submission of national marine sanctuary nominations. The re-opening of the sanctuary nomination process was supported by the majority of the nearly 18,000 comments NOAA received on its proposed rule issued June 28, 2013.

DATES: This final rule is effective on *[insert 30 days from date of publication in the Federal Register]*.

ADDRESSES: You may submit nominations to NOAA by any one of the following methods:

- Electronic Submissions: Submit nomination packages to sanctuary.nominations@noaa.gov.
- Mail: Director, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

All nomination packages will be posted in full upon submission to NOAA at www.nominate.noaa.gov. Do not submit confidential business, personal, sensitive, or protected information in a nomination. Personal information within all nominations will be kept confidential consistent with 5 U.S.C. 552(b)(6).

FOR FURTHER INFORMATION CONTACT:

- For general questions regarding the sanctuary nomination process, please contact Matt Brookhart, Chief, Policy & Planning Division, NOAA Office of National Marine Sanctuaries, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, matt.brookhart@noaa.gov.
- For specific interest in nominating areas off Maine to North Carolina, or the Great Lakes, contact Reed Bohne, Northeast and Great Lakes Regional Director, NOAA Office of National Marine Sanctuaries, 10 Ocean Science Circle, Savannah, GA 31411, reed.bohne@noaa.gov.
- For specific interest in nominating areas off South Carolina to Florida, the Gulf of Mexico, or the Caribbean, contact Billy Causey, Ph.D., Southeast Atlantic, Gulf of Mexico and Caribbean Regional Director, NOAA Office of National Marine Sanctuaries, 33 East Quay Road, Key West, FL 33040, billy.causey@noaa.gov.
- For specific interest in nominating areas off California to Alaska, contact William Douros, West Coast Regional Director, NOAA Office of National Marine Sanctuaries, 99 Pacific Street, Suite 100F, Monterey, CA 93940, william.douros@noaa.gov.
- For specific interest in nominating areas in the Pacific Islands, contact Allen Tom, Pacific Islands Regional Director, NOAA Office of National Marine Sanctuaries, 726 South Kihei Road, Kihei (Maui), HI 96753, allen.tom@noaa.gov.

SUPPLEMENTARY INFORMATION:**Electronic Access:**

This *Federal Register* document is also accessible via the Internet at

<http://www.access.gpo.gov/su-docs/aces/aces140.html>.

I. Background

The National Marine Sanctuaries Act (NMSA or Act, 16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to identify and designate as national marine sanctuaries areas of the marine environment, including the Great Lakes, which are of special national significance; to manage these areas as the National Marine Sanctuary System (System); and to provide for the comprehensive and coordinated conservation and management of these areas and the activities affecting them in a manner which complements existing regulatory authorities. Section 303 of the NMSA provides national marine sanctuary designation standards and factors required in determining whether an area qualifies for consideration as a potential national marine sanctuary, and section 304 establishes procedures for national marine sanctuary designation and implementation. Regulations implementing the NMSA and each national marine sanctuary are codified in Part 922 of Title 15 of the Code of Federal Regulations (CFR).

NOAA developed its first formal process for identifying and evaluating sites for consideration as national marine sanctuaries, known as the List of Recommended Areas (LRA), in the late 1970s (44 FR 44831). In 1983, NOAA replaced the LRA with the Site Evaluation List (SEL) (48 FR 24295). As defined in NOAA regulations at 15 CFR 922.3, the SEL was a list of natural and historical marine resource sites selected by the Secretary as qualifying for further evaluation for possible designation as national marine sanctuaries. The SEL was initially developed by regional review panels comprised of marine scientists associated with regionally-specific academic institutions or marine management authorities, and was intended to be reviewed and updated by NOAA every five years. When it was published in 1983, the SEL

included 29 sites (48 FR 35568), four of which were subsequently designated as national marine sanctuaries: Flower Garden Banks (1991), Stellwagen Bank (1992), Western Washington Outer Coast (renamed Olympic Coast, 1994), and Thunder Bay (2000) national marine sanctuaries (NMS). The list of sites on the 1983 SEL can be found at http://sanctuaries.noaa.gov/management/fr/48_fr_35569.pdf.

When the Site Evaluation List was established, the criteria for nominating areas to the list focused primarily on the natural resource qualities that made an area eligible for national marine sanctuary designation (48 FR 35568). The Marine Sanctuaries Amendments Act of 1984 (Pub. L. No. 98-496) added historical, research and educational qualities to the list of designation criteria. In 1988, NOAA issued a final rule (53 FR 43801) reflecting these amendments and, in 1989, announced it would consider new sites for the SEL consistent with these revised criteria (54 FR 53432). Ultimately, no new sites were added to the 1983 SEL.

In 1995, the ONMS Director deactivated the SEL (60 FR 66875) to focus on management of the existing twelve national marine sanctuaries, including expanding community engagement (the designation process for Thunder Bay National Marine Sanctuary, which was completed in 2000, began before deactivation of the SEL). Since then, ONMS has focused primarily on maturing management at the existing national marine sanctuaries through comprehensive management plan review, characterization of site resources, partnership building, and operational growth. At the same time, public interest in the designation of new national marine sanctuaries has grown. A variety of individuals, local, state, tribal governments, Congressional representatives, academic institutions, citizen groups, and non-government organizations from around the country have requested NOAA, the Department of Commerce, and the President to consider designating specific areas as new national marine sanctuaries.

These requests often reference the many and diverse benefits communities realize from a national marine sanctuary, including: meaningful protection of nationally significant marine resources; significant social and economic benefits from expanded travel, tourism, and recreation, as well as ocean-related jobs; increased opportunity for, and access to, federal research focused on local marine resources; education programs to promote ocean literacy, sustainable uses, and stewardship; and community-driven problem solving for a myriad of ocean issues.

NOAA considered re-establishing the sanctuary nomination process in the context of both the active community interest and the overall maturing of the System over the past two decades, including lessons learned from previous nomination processes. On June 28, 2013, NOAA issued a proposed rule to re-establish the sanctuary nomination process (78 FR 38848) and requested public comment on: 1) the completeness and utility of twelve draft criteria for evaluating areas of the marine environment as possible new national marine sanctuaries; 2) NOAA's proposed process steps for receiving sanctuary nominations; and 3) proposed amendments to ONMS regulations. This final rule addresses the nearly 18,000 comments NOAA received on the proposed rule (see section VI), and finalizes the criteria, management considerations, and process to nominate areas of the marine and Great Lakes environments for potential addition to the inventory of areas that may be considered for future designation as a national marine sanctuary. The final step of the sanctuary nomination process is addition to the inventory.

NOAA is not designating any new national marine sanctuaries with this action. Any designations resulting from the nomination process would be conducted by NOAA as a separate process, and within the public participation standards enacted by the NMSA and National

Environmental Policy Act. NOAA will follow all standards and requirements identified in the NMSA when, in the future, it considers a nomination for designation.

II. Description of Action

The purpose of this final rulemaking is to:

- 1) Provide public notice that NOAA has re-opened the public process to nominate areas of the marine and Great Lakes environments for consideration as national marine sanctuaries;
- 2) Provide the final criteria and considerations NOAA will use to evaluate new national marine sanctuary nominations for inclusion in an inventory of areas that may be considered for future designation as national marine sanctuaries;
- 3) Describe the process by which areas are nominated and evaluated by NOAA for potential inclusion in an inventory of areas that may be considered in the future as national marine sanctuaries; and
- 4) Identify changes to various sections of the ONMS regulations at 15 CFR 922.

The sanctuary nomination process will focus on nominations generated collaboratively by communities (as defined above) and coalitions of interested parties. It will replace the currently inactive Site Evaluation List, which tended towards an agency-driven, top-down approach, with a more grassroots, bottom-up approach to national marine sanctuary nominations. NOAA is not considering evaluation of sites from the deactivated Site Evaluation List. The public may re-nominate sites from the deactivated Site Evaluation List, per the final evaluation criteria, and resubmit these areas for NOAA's consideration.

NOAA will begin accepting new nominations following the effective date of this final rule, and in accordance with collection-of-information requirements under OMB control number 0648-0682 (see Section VIII, B below for a full discussion of Paperwork Reduction Act requirements).

III. Nomination Criteria and Considerations

In its June 2013 proposed rule, NOAA asked the public to comment on twelve criteria for nominating areas as possible national marine sanctuaries. The twelve proposed criteria were based on national marine sanctuary designation standards in section 303(b) of the NMSA. Many of the public comments included suggestions on how to further refine the criteria to be more useful or operational in the nomination phase. The comments included broad suggestions for more detail, suggestions specific to one or more of the proposed criteria, suggestions on which criteria to emphasize, and suggestions that some of the proposed criteria did not fit the definition of criteria and would be better described as “considerations.” NOAA also received comments asking for more information on whether there would be a minimum number of criteria that an area would need to meet to be accepted into the inventory.

Based on these comments, NOAA developed four final criteria to evaluate the national significance of a nomination, and seven considerations for management of the area as a national marine sanctuary. These national significance criteria and management considerations remain consistent with the designation standards in section 303(b) of the NMSA while providing more specificity and clarity for nominating communities. While NOAA is not establishing a minimum number of national significance criteria, nor giving greater significance to any particular criterion, the strongest nominations will provide a clear connection and focus on the criteria most

relevant to the goal and intent for the nominated area, and provide as much information as possible for those criteria. Nominations should provide information addressing all seven management considerations, with special emphasis on consideration #7, describing community-based support. Nominations will not be judged against each other with regard to completeness or robustness of criteria and considerations. NOAA's final evaluation will be based on a qualitative analysis of a nomination's ability to demonstrate the relevant national significance criteria and management considerations; the agency will not apply a numerical value or score to any nomination.

A. National Significance Criteria:

- 1) The area's natural resources and ecological qualities are of special significance and contribute to: biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.
- 2) The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: individually or collectively are consistent with the criteria of eligibility for listing on the National Register of Historic Places¹; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.

¹ Source, 36 CFR Section 60.4: The National Register of Historic Places evaluation criteria are for resources:
a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
b) that are associated with the lives of significant persons in our past; or
c) the embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
d) that have yielded or may likely yield, information important in history or prehistory.

- 3) The area supports present and potential economic uses, such as: tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area's resources.
- 4) The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.

B. Management Considerations:

- 1) The area provides or enhances opportunities for research in marine science, including marine archaeology.
- 2) The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.
- 3) Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.
- 4) A national marine sanctuary would provide unique conservation and management value for this area or adjacent areas.
- 5) The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.
- 6) There are commitments or possible commitments for partnership opportunities such as cost sharing, office space, exhibit space, vessel time, or other collaborations to aid conservation or management programs for the area.
- 7) There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an

environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).

IV. Process for Submission and Evaluation of Nominations

In its June 2013 proposed rule, NOAA requested comments on the proposed process for submitting and evaluating nominations. In general, commenters requested NOAA provide more detail about the process, including how the agency would make decisions on nominated areas and timelines for review. NOAA has developed its final process based on how the agency currently anticipates implementation of the review process. If this process evolves over time, NOAA will notify the public of changes to the review process. NOAA anticipates its review process of a nomination will take between three to six months, although additional time may be required for review of more complex nominations. The final nomination process is summarized in the following six steps:

Step 1) Nomination Development. The nomination process begins with a community-based development of a nomination. There is no requirement for who may nominate an area for consideration; however, nominations should demonstrate broad support from variety of stakeholders and interested parties. The nomination should also identify the specific goal or intent for nominating a national marine sanctuary. Any nomination must provide the information necessary to adequately address the national significance criteria relevant to the nominator's goal for nominating (and ultimately designating) that area as a national marine sanctuary, as well as information for all of the management considerations.

Step 2) Nomination Submission. The formal request for national marine sanctuary consideration occurs when the nominator formally submits a nomination to NOAA. The

nomination should include a specific point of contact. There is no required form for the nominations; however, to guide nominators, NOAA has posted a nomination guide on the ONMS website (www.nominate.noaa.gov). The maximum length for a nomination is not to exceed 25 pages, including attachments. All nominations will be made publicly available in their entirety on the ONMS website. Do not submit confidential business, personal, sensitive, or protected information in a nomination. Personal information within all nominations will be kept confidential consistent with 5 U.S.C. 552 and other federal laws. NOAA encourages nominators to contact NOAA if there are questions about what to include or what will be posted online. The nominator shall not deliver any copyrighted information without first acquiring for or granting to the Government a copyright license for the information. There are no deadlines for submission of nominations while the nomination process is open. NOAA encourages electronic submissions be sent to Sanctuary.Nominations@noaa.gov, but will accept paper applications by mail as well. All nominations should be addressed to: Director, NOAA Office of National Marine Sanctuaries. The mailing address is 1305 East West Highway, SSMC4 11th Floor, Silver Spring, MD 20910.

Step 3) Sufficiency Review. Once NOAA receives a nomination, the agency will review it for sufficiency against the national significance criteria and management considerations. This initial review will determine if the nomination has enough information for NOAA to adequately conduct a subsequent, more detailed review based on the significance criteria and management considerations. NOAA will strive to complete its sufficiency review within thirty (30) days of receiving a nomination. Once complete, NOAA will inform the nominator that either the nomination is moving to the next stage of review, or additional information is needed to complete the nomination. In some cases, NOAA may determine that a nomination is insufficient

and will decline the nomination. In those cases, NOAA will provide the nominator with a letter of rationale in support of its decision to decline the nomination. The letter of rationale will also be posted on NOAA's nomination website. A nominator may resubmit a revised nomination for an area that has been declined by the agency.

Step 4) National Significance Review. Nominations NOAA determines to be sufficient will then be reviewed against the national significance criteria identified in Section III.A of this final rule. NOAA will strive to complete the national significance review within thirty (30) days of the nomination being determined to be sufficient. When necessary, NOAA may conduct an external peer review to provide additional expertise on a nomination's ability to meet the national significance criteria. Any external review is expected to add thirty (30) days to the review timeline. The composition of the external peer review group will be based on the expertise needed for that nomination. There will not be a standing review group and each reviewer will provide their own recommendation. NOAA will not seek a consensus recommendation from any peer review group. The outcomes of the external peer review, if needed, will be considered in NOAA's determination of the national significance of the nominated area. Once its review is complete, NOAA will notify the nominator of one of the three possible outcomes: 1) the nomination moves on to the next step of review; 2) NOAA requires additional information to determine the nominated area meets the national significance criteria; or 3) the nomination does not meet the national significance criteria and is declined with a letter of rationale.

Step 5) Management Review. Nominations NOAA determines to meet the national significance criteria will then be reviewed against the management considerations identified in Section III.B of this final rule. NOAA will strive to complete its management review after thirty

(30) days of the nomination being determined to be nationally significant. NOAA will discuss the nomination with interested tribal or state governments during this review when the area is in proximity to tribal or state lands. Similarly, NOAA will discuss the nomination with Federal land managers in proximity to the nominated area. Any tribal, state, or Federal coordination is expected to add additional time to NOAA's review. NOAA encourages nominators to coordinate with relevant tribal and state governments, and relevant Federal land managers, before a nomination is submitted. Upon completion of the management review, NOAA will notify the nominator of one of three possible outcomes: 1) the nomination moves on to the next step; 2) NOAA requires additional information to determine the nominated area meets the management considerations; or 3) the nomination does not meet the management considerations and is declined with a letter of rationale.

Step 6) Acceptance to Inventory. Nominations that the ONMS Director deems to have successfully completed the reviews for sufficiency, national significance, and management considerations will be added to a standing inventory of areas NOAA could consider for national marine sanctuary designation. NOAA will send a letter of notification to the nominator, and then publish a Federal Register notice when an area has been added to the inventory. The inventory and notification letters will also be posted on the ONMS website. If NOAA takes no designation action on a nomination in the inventory, the nomination will expire after five years from the time it is accepted to the inventory.

Addition to the inventory is the last step in the nomination process. NOAA is not designating any new national marine sanctuaries with this action. Any designations resulting from the nomination process would be conducted by NOAA as a separate process, and within the public participation standards enacted by the NMSA and National Environmental Policy Act.

NOAA will follow all designation standards and requirements identified in the NMSA when, in the future, it considers a nomination for designation.

Nominations will be reviewed in the order they are received by NOAA. During the development of a nomination, ONMS staff may answer questions on the criteria, considerations, process, or other general questions about national marine sanctuaries. Although not mandatory, NOAA encourages nominators to contact their respective ONMS Regional Directors at the address or email above for clarification on any questions relative to a nomination proposal. While NOAA is able to provide clarity and guidance on the criteria and considerations, it is the nominator's responsibility to research, write, and develop nominations.

If NOAA needs additional information during the nomination process, a request will be sent to the nominator, either by email, phone, or letter. The nominator should provide the requested information, or an estimate of additional time required to prepare the information, to the NOAA point of contact within thirty (30) days. If a response has not been received from the nominator within thirty (30) days, the nomination will be deemed withdrawn, and no further action will be taken on the nomination by NOAA. In those cases, the nominator may resubmit a nomination to NOAA for reconsideration.

V. Regulatory Amendments

In this rulemaking, NOAA revises 15 CFR 922.10 to codify it is accepting nominations for potential national marine sanctuary designation, and providing the criteria and considerations it will use to evaluate nominations. NOAA is also:

- replacing the definition of the Site Evaluation List with a definition of “Inventory” in 15 CFR sections 922.3; and

- replacing references to the Site Evaluation List with references to the Inventory in 15 CFR sections 922.3 and 922.21(a).

Note that, through a separate rulemaking dated January 28, 2013, (78 FR 5998), NOAA proposed to revise regulations regarding the Site Evaluation List as part of a comprehensive regulatory review pursuant to Executive Order 13563. In that rulemaking, NOAA proposed to delete paragraph 922.10(c). That proposal is no longer necessary due to this rulemaking and NOAA will remove these references when that rulemaking is made final.

VI. Response to Public Comments

1. Comment: The vast majority of the commenters supported the re-establishment of the sanctuary nomination process, stating it is an important first step toward filling gaps in ocean and Great Lakes protection. Many also commented that after 13 years with no new national marine sanctuary designations, a process to nominate new national marine sanctuaries is warranted. These commenters cited a number of reasons for support of new national marine sanctuaries, including general environmental protection, management of climate change, enhancing the value of coastal and ocean economies through recreation and tourism, and the community-based nature of the nomination process proposed by NOAA. Many of these commenters were also concerned about potential impact to the marine environment from oil and gas activities, and the role new national marine sanctuaries could play in helping to mitigate negative impacts.

Response: NOAA concurs, and believes it is appropriate to move forward with re-establishing the sanctuary nomination process.

2. Comment: Several commenters argued that the criteria lacked completeness and utility (e.g., were incomplete, too general, not appropriate, or not quantitative enough). Some commenters cautioned that the proposed criteria were too broad and would result in many underqualified nominations.

Response: NOAA has taken these comments into consideration to provide more clear and robust criteria that are a logical outgrowth of the twelve criteria put forward in the proposed rule. NOAA agrees that there were distinctions of use and applicability among the proposed twelve criteria, and with this final rule, has refined the language of the criteria and made their application more manageable by reorganizing related criteria into two categories – national significance criteria and management considerations. The refined criteria and considerations are consistent with, and do not change substantively, those listed in the proposed rule, but address public comments requesting that NOAA provide more clarity and specificity regarding the nomination standards. NOAA anticipates that the national significance and management categories will facilitate the submission of new national marine sanctuaries. The national significance criteria focus on whether an area is considered a special place worthy of Federal protection by addressing the ecological value, historical significance, economic uses, and publically-derived benefits of the area. The management considerations provide a more specific interpretation of the relevant NMSA Section 303(b) designation standards, such as explicit recognition of partnership opportunities and specific definition of groups that could be included in the community supporting the nomination. NOAA describes in Section IV how it will use these two categories in the review process for evaluating nominations.

3. Comment: One commenter suggested that NOAA should remove the criteria that measures economic impact.

Response: The NMSA requires NOAA consider the economic benefits and impacts of the present and potential uses of national marine sanctuaries (NMSA Section 303 (b)(1)(I)). Sustaining local economies that rely on a healthy marine environment is an important goal at all national marine sanctuaries. NOAA cannot therefore remove this statutorily required criteria.

4. Comment: Commenters asked NOAA to include consideration and recognition of the importance of waterborne commerce in the designated area.

Response: NOAA believes the final rule includes the criteria necessary for considering compatible uses of national marine sanctuaries, including waterborne commerce. NOAA recognizes the vital importance of waterborne commerce, not only to communities but to the Nation and a vibrant economy.

5. Comment: Commenters suggested that the core criteria should be protection of natural resources, ecological qualities, and areas of historical, cultural, archaeological, or paleontological significance.

Response: The final criteria focus first on the national significance of a nominated area's biological and cultural resources, and which includes the considerations mentioned by the commenters. National marine sanctuaries are designated with the primary purpose of resource protection, and the value added to both local communities and the Nation, and any new national marine sanctuary designation would be considered within this context.

6. Comment: Commenters asked NOAA to ensure a criterion includes maintenance of endangered species and their critical habitat.

Response: The final national significance criteria include a provision that takes into account the value of an area in maintaining endangered species and their habitat. Consideration of endangered species and their habitat is also required under the Endangered Species Act.

7. Comment: Several commenters asked NOAA to consider the balance between protecting the health of the proposed area while providing access to and use of that area.

Response: The final national significance criteria recognize the significance of an area's natural and cultural resources, as well as its economic, use, and aesthetic values. Furthermore, the management considerations provide nominators the opportunity to identify the existing or potential management values of an area, and how those values may support a national marine sanctuary.

8. Comment: Several commenters suggested that the proposed rule did not provide the public with a good sense for how the criteria would be applied in deciding which nominations will be moved toward national marine sanctuary designation. Some commenters asked if there was a threshold or standard for each criterion.

Response: Consistent with the criteria in the proposed rule, NOAA has based the final criteria on section 303(b) of the NMSA. However, NOAA has refined the final criteria to be more operational in determining national significance and manageability, and in doing so believes the national significance criteria and management considerations set clear standards for nominating and evaluating an area as a national marine sanctuary. When appropriate, NOAA will conduct a third party external peer review to further evaluate a nomination's ability to meet the final criteria and considerations. Nominations will not be judged against each other with

regard to completeness or robustness of criteria. NOAA's final evaluation will be based on a qualitative analysis of a nomination's ability to demonstrate the relevant national significance criteria and management considerations; the agency will not apply a numerical value or score to any nomination.

9. *Comment:* Several commenters asked NOAA to define the number of criteria that need to be met in order to have a successful nomination, and how those criteria will be measured. Commenters also asked NOAA if there were mandatory and optional criteria, and how the criteria relate to each other.

Response: There is no minimum number of national significance criteria a nominator needs to meet for a successful nomination. NOAA encourages nominations to include information on all of the criteria relevant to the specific goals and intent a nominator has for an area. Nominations with high maritime heritage value, for example, may require less or no information on the natural resource criteria. Similarly, NOAA is not requiring nominations with high natural resource value to declare or define high maritime heritage value if that value does not exist. Nominations with both high natural resource and maritime heritage value should, however, include information on both qualities. The strongest nominations will have a clear sense of all the national significance criteria relevant to that area, and provide as much information as possible for those criteria. Nominations should provide information addressing all seven management considerations, with special emphasis on consideration #7 describing community-based support. NOAA encourages nominators to contact their respective ONMS Regional Directors at the address or email above for clarification on any questions relative to a nomination proposal.

10. Comment: Several commenters requested NOAA ensure the criteria consider the current management structure and level of protection for the area proposed.

Response: NOAA recognized this issue in the proposed rule and has also included it in the final rule under management consideration #5 (“The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.”).

11. Comment: Several commenters believed that the proposed process for evaluating nominations was incomplete and did not provide the public with a clear indication of how NOAA would proceed once it received nominations. They believed that several questions remained unanswered by the proposed regulations, including: who will make a decision on the nomination; how will the process be transparent; and how other agencies and regional fishery management councils are to be involved.

Response: NOAA has provided significant detail on the process for submitting national marine sanctuary nominations in section IV of the final rule, including what actions will occur at each of the six steps, possible outcomes of the process, opportunities for nominators to discuss the process with NOAA, and that the ONMS Director will determine at the end of the review if a nomination is accepted into the inventory. NOAA will also include this and additional details on the ONMS website. Other federal agencies and the regional fishery management councils may choose to include themselves as part of the nomination of a new national marine sanctuary. If in the future NOAA decides to begin designation for a nomination in the inventory, the NMSA

defines the specific coordination and consultation requirements ONMS must follow with other Federal agencies and the respective regional fishery management councils.

12. Comment: Some commenters indicated that certain interested parties may not have the capacity to develop a nomination or have access to the information necessary to clearly demonstrate the criteria or management considerations. They asked if NOAA could provide technical services, assistance, or financial support for nomination development.

Response: NOAA may engage in discussion with communities as they develop and revise their nominations to provide informational assistance or recommendations. In some instances, the agency may be able to provide some technical services, but does anticipate providing any financial support. It will be the responsibility of the nominators to acquire and synthesize the information necessary to develop their nomination.

13. Comment: Several commenters were concerned that if sites were “weighted” in value, that those focusing solely on historic and cultural resources would not score as high as those which also include ecological values, and that the process would be inherently biased against cultural resource nominations. These reviewers suggested constructing two separate review processes; one for nominating ecologically-focused national marine sanctuaries and the other for maritime heritage-focused national marine sanctuaries, so that these nominations are not weighed against each other.

Response: NOAA will not be scoring the nominations individually or against each other, and will be looking at the merits of each nomination relative to the nominators’ specific intent for their respective nomination and the relevant criteria. Per the NMSA, the final criteria

recognize both biological and cultural resources as under consideration for possible national marine sanctuary designation. See NOAA's response to comment #9 above for additional information on how a nominator should consider the resources of their nomination.

14. Comment: Several commenters indicated they would like more transparency in the evaluation process once a nomination is received. They also suggested that NOAA develop and provide a timeline.

Response: Based on these comments, NOAA has revised its final criteria, management considerations, and process to provide more transparency and clarity. With regard to a timeline, the final rule indicates that NOAA will strive to complete the review process in 90 to 180 days (see section IV). Furthermore, when NOAA adds an area to the inventory for areas to consider for national marine sanctuary designation, it will stay active in the inventory for up to five years.

15. Comment: Several commenters questioned moving forward with the sanctuary nomination process given recent trends of the Federal budget, as well as the provisions within section 304(f) of the NMSA, "Limitation on Designation of New Sanctuaries."

Response: NOAA's purpose with this final rule is to re-open the process by which the public submits nominations to NOAA for consideration as new national marine sanctuaries. NOAA will address any resource issues, as well as NMSA section 304(f), when, in the future, it considers a nomination for designation. Designations of new national marine sanctuaries are not addressed in this action.

16. Comment: Several commenters asked NOAA to clarify how the nomination process for new national marine sanctuaries coincides with other government policy initiatives, such as the National Ocean Policy.

Response: While NOAA is implementing the sanctuary nomination process under the authority of the NMSA, this action also meets the goals of the National Ocean Policy Implementation Plan. The Implementation Plan includes a specific action to reactivate the ONMS Site Evaluation List (SEL). For the reasons stated in this preamble, NOAA is replacing the SEL with the sanctuary nomination process, but considers this action consistent with the Implementation Plan's goal of SEL reactivation. NOAA contemplates collaboration with other Federal agencies in management consideration #5 ("The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area."), as does section 301(b)(7) of the NMSA, which directs ONMS to develop and implement coordinated plans for the protection and management of national marine sanctuaries.

17. Comment: Several commenters asked NOAA to take into account the presence/absence of existing marine protected areas (MPAs) in the vicinity (e.g., who manages them, the extent they are currently working, etc.). Other commenters recommended or were concerned about the prospect of using the existing list of "special places" (e.g., MPAs) as a starting point as an existing inventory of worthy, nationally significant sites.

Response: A nominator may elect to include an existing protected area, such as marine reserve designated under state authority, as part of its nomination for a national marine sanctuary. However, nominators should consider that the final nomination criteria identified in

this rule may be different from, or inconsistent with, the criteria applied to protected areas managed under other authorities. Nominators should consider the management scheme most appropriate for an area prior to submitting a nomination for a national marine sanctuary. While the NMSA is a robust and adaptive management tool that offers many alternatives for marine protection and conservation, as indicated by management consideration #4 (“A national marine sanctuary would provide unique conservation and management value for this area or adjacent areas.”), it may not be suitable for certain areas or certain types of resources.

18. Comment: Several commenters expressed concern over how tribal governments will be included in the process. Some commenters asked that NOAA include “maintenance of native cultures” in its final criteria, and recognize "tribal governments" in its list of existing authorities.

Response: Final management consideration #7 identifies the types of community support NOAA recommends for a nomination, and includes tribal governments. Further, as discussed in section IV of this final rule, if a nomination includes waters in proximity to tribal lands or areas with customary and usual use of treaty waters or stations, NOAA recommends the nominator discuss its nomination with the respective tribal government. If a nomination does not indicate tribal consultation for these types of areas, NOAA will request the nominator do so before continuing its review of the nomination. Should ONMS consider any nomination for national marine sanctuary designation, it would adhere to its consultation and coordination obligations under the NMSA and potential obligations under Section 106 of the National Historic Preservation Act with any tribal government included in, or in proximity to, the area. NOAA will also fulfill its obligations and responsibilities pursuant to Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”

19. Comment: Some commenters suggested NOAA include the term “traditional use” in addition to subsistence use in its final criteria, noting that “traditional/native uses may be broader than subsistence and this would be a helpful clarification.”

Response: NOAA has added “subsistence and traditional uses” to National Significance Criterion #3 (“The area supports present and potential economic uses, such as tourism, commercial and recreational fishing, subsistence and traditional uses, diving, and other recreational uses that depend on conservation and management of the area’s resources.”)

20. Comment: One commenter asked NOAA to consider how a proposed area would maintain native cultures.

Response: If a proposed nomination includes or is in proximity to tribal lands, NOAA recommends the nominator consider the maintenance of tribal cultures in its proposal. In addition, NOAA has added “subsistence and traditional uses” to National Significance Criterion #3 (“The area supports present and potential economic uses, such as tourism, commercial and recreational fishing, subsistence and traditional uses, diving, and other recreational uses that depend on conservation and management of the area’s resources.”)

21. Comment: Some commenters suggested that the idea of making the process more “bottom up” and “community-driven” was unclear and may exclude the views of stakeholders outside of the immediate geography of a nominated area. Some of these commenters noted there are ocean areas where the resources are managed for the benefit of the Nation as a whole, not limited local user groups. These commenters wanted clarity on the role of “local” vs. “national”

stakeholder groups, and more information on how NOAA defined “broad community support.” Commenters were also concerned about how NOAA would identify and evaluate support for the nomination to ensure that all voices with an interest are heard, not just the voices closest to the proposed area.

Response: NOAA provided a broad interpretation of ‘communities’ in the proposed rule, and acknowledges in this final rule that communities are not limited to a specific geography. To further emphasize this point, NOAA includes examples of what constitutes communities in its final management consideration #7 (“There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association.”)). NOAA believes this revised description of “communities” provides for a variety of interested parties to organize and submit national marine sanctuary nominations.

22. Comment: Several commenters asked for a clarification about the differences between the Site Evaluation List and the new sanctuary nomination process.

Response: The primary difference between the Site Evaluation List (SEL) and the sanctuary nomination process is that the sanctuary nomination process necessitates nominations be developed by the public in a grass roots, bottom up model that promotes community-based stewardship of special marine and Great Lakes areas. In contrast, the SEL relied almost solely on input from regional review panels comprised of academic experts and ocean management

practitioners. NOAA believes the final criteria, management considerations, and nomination process provide specific, well-defined parameters for communities across the Nation to have a voice and opportunity to effectively nominate areas that meet the high standard of national marine sanctuary designation.

A secondary difference is that the sanctuary nomination process allows nominators to submit areas they feel best represent the most current marine and Great Lakes areas of national significance. All sites on the SEL were 20 or more years old and have likely experienced changes in resources (both ecological and cultural) and management. NOAA believes it prudent, therefore, to remove these sites as candidates for national marine sanctuary designation and allow the public to consider new areas. Nominators can submit areas on the SEL as part of the new sanctuary nomination process, but should ensure these areas are consistent with the final national significance criteria and management considerations.

23. Comment: Several commenters asked about the sites listed on the deactivated Site Evaluation List and requested that NOAA reconsider removing these sites from consideration.

Response: While the Site Evaluation List (SEL) was last active in 1995, most of the sites on the SEL were originally put on the list in the 1980s, and there have not been any recent efforts by NOAA to update information about those sites. Therefore, NOAA has determined it appropriate to remove the existing SEL sites as pre-existing areas for consideration as national marine sanctuaries. However, nominators can re-propose areas from the SEL per the final national significance criteria, management considerations, and process identified in this final rule. Following the process described in this final rule, NOAA will evaluate all nominated areas, including any that may have previously been on the SEL.

24. Comment: One commenter asked NOAA to provide more information on how the sanctuary nomination process would deal with nominations to de-designate a national marine sanctuary. This commenter suggested that the goal of the ONMS should be to return the areas to the state's control.

Response: Designation and de-designation of national marine sanctuaries are beyond the scope of this action. There are other means by which NOAA evaluates the effectiveness of national marine sanctuary management, including a rigorous management plan review processes, that could consider changes in regulations and area of national marine sanctuary managed. This final rule does not contemplate the de-designation of any national marine sanctuary.

With regard to “returning areas to state control,” this is not a goal of the NMSA. Many of the current national marine sanctuaries have strong partnerships with the respective state government, and NOAA anticipates these will continue in any future designation of a national marine sanctuary adjacent to, or in proximity to, state lands.

25. Comment: Some commenters had suggestions for amending ONMS regulations to align the sanctuary nomination process proposed rule with a January 2012 proposed rule issued by NOAA designed to clarify and update several ONMS regulations. Commenters suggested that the two rules were conflicting, and that NOAA should withdraw both rules and begin the process again with an advanced notice of rulemaking.

Response: In January 2012 (78 FR 5998), NOAA issued a proposal to amend national marine sanctuary regulations as part of a comprehensive regulatory review pursuant to Executive Order 13563. That action proposed to modify the Site Evaluation List (SEL) regulations so that

rather than NOAA solely selecting potential sites from a periodically updated list (the SEL), the public would also be able to petition the agency for new national marine sanctuaries in areas not contemplated by the SEL.

Upon further analysis and after considering public comments on the June 2013 proposed rule for the sanctuary nomination process, NOAA believes the sanctuary nomination process described in this final rule provides a more structured process for stakeholder involvement in the nomination of new national marine sanctuaries. When NOAA ultimately revises its final rule for the January 2012 proposal to amend sanctuary regulations, it will address changes to the SEL prompted by the sanctuary nomination process.

26. Comment: Most commenters supported the regulatory amendments that were proposed. Some commenters suggested that the proposed amendment to 15 CFR 922.10 (b) be revised to include explicit steps for submitting a nomination. With regard to section 922.10(c), some commenters were concerned that NOAA simply stating “any further guidance issued by NOAA” could run afoul of the Administrative Procedures Act (APA). Another commenter suggested keeping section 922.21, but replacing references to SEL with references to “list of eligible candidates.”

Response: NOAA agrees regarding 15 CFR 922.21, and has replaced the reference to SEL with a definition of “Inventory” (section 922.3). NOAA has also revised section 922.10 based on comments requesting more detailed information on the criteria, management considerations, and review process for national marine sanctuary nominations. NOAA has removed from the final rule the language “any further guidance issued by NOAA.”

VII. Summary of Changes from the Proposed Rule

With this final rule, NOAA has made several changes in response to comments and for purposes of clarity that are a logical outgrowth of the proposed rule. In the proposed rule, NOAA suggested using the twelve standards set forth in NMSA section 303(b) to evaluate nominations. Several public comments noted that these standards are too general for use as criteria and suggested that NOAA provide more clarity and specificity regarding their meaning and intent (see comments 2 through 6, and 10). In response to these comments, NOAA clarified the language of the proposed standards and grouped the standards into two categories, one addressing national significance and a second considers the management feasibility of a nomination. NOAA has revised the final rule to include four national significance criteria and seven management considerations, all of which are consistent with the standards of section 303(b) of the NMSA, as identified in the proposed rule. NOAA removed two proposed standards without substantively changing the proposed rule, as these standards were more appropriate for consideration during the national marine sanctuary designation process, rather than the nomination process. The removed standards focused on the manageability of an area as a national marine sanctuary and an area's value as an addition to the National Marine Sanctuary System.

NOAA added two additional measurements (as final management considerations) to this final rule that were a logical outgrowth of the proposed rule (management considerations #6 and #7). These considerations seek to determine the variety of community-based interest in a national marine sanctuary nomination, and the potential partnership opportunities associated with the specific area being nominated, both of which NOAA believes are essential to any future

national marine sanctuary nomination. The public comments on the proposed rule and NOAA's experience with the current sanctuaries has shown that community engagement is critical to successful sanctuary management.

NOAA has also made revisions to the nomination review process based on the public comments on the proposed rule. The public requested additional clarity on the review steps that are described in six steps in this final rule.

Finally, NOAA has made changes to the regulatory amendments, by revising section 922.10, and adding a definition in section 922.3 to update the regulations with the new nomenclature for the sanctuary nomination process. NOAA has also revised section 922.21.

VIII. Classification

A. Regulatory Flexibility Act

At the proposed stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a substantial number of small entities. NOAA received no comments on this certification, the rationale for which is contained in the proposed rule. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

B. Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid Office of Management and

Budget (OMB) control number. Nominations for national marine sanctuaries discussed in this final rule involve a collection-of-information requirement subject to the requirements of the PRA. OMB has approved this collection of information requirement under OMB control number 0648–0682.

The collection-of-information requirement applies to persons seeking to submit nominations to designate new national marine sanctuaries and is necessary to determine whether the nominated areas are consistent with the purposes and policies of the NMSA. Public reporting burden for this collection of information is estimated to average 29 hours per response (nomination and supporting documents), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

C. Executive Orders 12866 and 13563

This rule has been determined to not be significant within the meaning of Executive Order 12866.

D. National Environmental Policy Act

NOAA has concluded that this action will not have a significant effect, individually or cumulatively, on the human environment, because this action is not creating or designating any new national marine sanctuaries. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.03c.3(i) of NOAA Administrative Order 216–6. Specifically, this action is a notice of an administrative and legal nature. Should NOAA decide to designate a national marine sanctuary, each individual national marine sanctuary designation will be subject

to case-by-case analysis, as required under NEPA and as outlined in section 304(a)(2)(A) of the NMSA.

E. Information Quality Act

Pursuant to Section 515 of Public Law 106-554 (IQA), this information product has undergone a pre-dissemination review by [insert Office], completed on [date]. The signed pre-dissemination review and documentation form is on file in that office.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Amendments, Authorization, Commercial Fishing, Cultural Resources, Definitions, Designation, Ecology, Environmental protection, Habitat, Marine resources, Maritime Heritage, Natural resources, Nomination, Recreational fishing, Resources, Research, Traditional uses, Tourism, Water resources.

Dated: June 9, 2014.

Holly A. Bamford, Ph.D.,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, NOAA amends 15 CFR part 922 as follows:

PART 922 – NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. In § 922.3:

- a. Remove the definition of “Active Candidate”;
- b) Add a definition of “inventory”; and
- c) Remove the definition of “Site Evaluation List (SEL)”.

The addition reads as follows:

§ 922.3 Definitions.

* * * * *

Inventory means a list of nominated areas selected by the Director as qualifying for future consideration of designation as a national marine sanctuary.

* * * * *

3. Revise subpart B to read as follows:

Subpart B - Sanctuary Nomination Process

Sec.

922.10 General.

922.11 Selection of nominated areas for national marine sanctuary designation.

§ 922.10 General.

(a) *Nomination process.* The sanctuary nomination process (see National Marine Sanctuaries website www.sanctuaries.noaa.gov) is the means by which the public can submit areas of the marine and Great Lakes environments for consideration by NOAA as a national marine sanctuary.

(b) *National significance criteria.* The Director will consider the following in determining if a nominated area is of special national significance:

- (1) The area’s natural resources and ecological qualities are of special significance and

contribute to: biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.

(2) The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: individually or collectively are consistent with the criteria of eligibility or listing on the National Register of Historic Places; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.

(3) The area supports present and potential economic uses, such as: tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area's resources.

(4) The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.

(c) *Management considerations.* The Director will consider the following in determining the manageability of a nominated area:

(1) The area provides or enhances opportunities for research in marine science, including marine archaeology.

(2) The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.

(3) Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.

- (4) A national marine sanctuary would provide unique conservation and management value for this area that also have beneficial values for adjacent areas.
 - (5) The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.
 - (6) There are commitments or possible commitments for partnerships opportunities such as cost sharing, office space or exhibit space, vessel time, or other collaborations to aid conservation or management programs for the area.
 - (7) There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).
- (d) Following evaluation of a nomination against the national significance criteria and management considerations, the Director may place nominated areas in a publicly available inventory for future consideration of designation as a national marine sanctuary.
- (e) A determination that a site is eligible for national marine sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

§ 922.11 Selection of nominated areas for national marine sanctuary designation.

- (a) The Director may select a nominated area from the inventory for future consideration as a national marine sanctuary.

(b) Selection of a nominated area from the inventory shall begin the formal sanctuary designation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and posted on the Office of National Marine Sanctuaries website. Any designation process will follow the procedures for designation and implementation set forth in section 304 of the Act.

§ 922.21 [Removed and Reserved]

4. Remove and reserve § 922.21.

§ 922.23 [Removed and Reserved]

5. Remove and reserve § 922.23.

[FR Doc. 2014-13807 Filed 06/12/2014 at 8:45 am; Publication Date: 06/13/2014]